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18 **UNITED STATES DISTRICT COURT**

19 **CENTRAL DISTRICT OF CALIFORNIA**

20 GROVER PRODUCTS CO.,

21 Plaintiff,

22 vs.

23 FLEETPRIDE, INC., MEGAN
24 LEMON, AND DOES 1-10,
25 INCLUSIVE,

26 Defendants.

Case No.

PLAINTIFF'S COMPLAINT

JURY TRIAL DEMANDED

1 Plaintiff Grover Products Co. (“Grover”) for its Complaint against Defendants
2 FleetPride, Inc. (“FleetPride”), Megan Lemon, and Does 1–10 (collectively,
3 “Defendants”), states and alleges as follows:

4 **NATURE OF THIS ACTION**

5 1. Since the 1930s, Grover has manufactured and sold air horns and air horn-
6 related products that have earned a reputation for high quality and reliability. Grover
7 sells its products across the country and internationally.

8 2. Instead of competing with Grover on fair terms, Defendants have chosen to
9 try to deceive customers into believing they are buying genuine products manufactured
10 by Grover. FleetPride sells counterfeit products that are meticulously designed to copy
11 the appearance and model numbers of Grover products. Defendants directly and willfully
12 misrepresent that the products FleetPride offers for sale are genuine products
13 manufactured by Grover by using Grover’s registered trademarks and model numbers in
14 advertising and communications to customers.

15 3. FleetPride has repeatedly been caught and instructed to cease its unlawful
16 use of Grover’s registered trademarks. Defendants have, nevertheless, knowingly and
17 willfully continued to advertise and sell FleetPride’s products by misrepresenting them to
18 be Grover’s products.

19 4. As a result of Defendants’ conduct, Grover brings this action seeking
20 damages and injunctive relief, asserting claims for counterfeiting and infringement of
21 Grover’s trademarks, unfair competition, false designation of origin, false and misleading
22 product descriptions, unlawful and deceptive trade practices, and unjust enrichment.

23 **THE PARTIES**

24 5. Grover is a corporation organized under the laws of California that
25 maintains its principal place of business at 3424 East Olympic Boulevard, Los Angeles,
26 California 90023.

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1 6. On information and belief, FleetPride is a corporation organized under the
2 laws of Alabama with its principal place of business in Irving, Texas.

3 7. Megan Lemon is an individual employed by FleetPride as a Category
4 Manager. On information and belief, she is a resident of Texas.

5 8. Does 1–10 are individuals employed by or acting at the direction of
6 FleetPride whose identities are not presently known to Grover, but who are involved in
7 the unlawful conduct described herein, causing injury to Grover.

8 **JURISDICTION AND VENUE**

9 9. This Court has jurisdiction over the subject matter of this action pursuant to
10 15 U.S.C. § 1121 and 28 U.S.C. §§ 1331 and 1338(a) and (b), and has supplemental
11 jurisdiction under 28 U.S.C. § 1367(a) over Grover’s claims brought under state law.

12 10. This Court has personal jurisdiction over FleetPride. FleetPride has
13 purposefully, continuously, and systematically conducted business in California.
14 FleetPride maintains twenty-seven store locations in California and another ten service
15 centers located in California that service trucks and trailers. FleetPride’s wholesale unit,
16 Parts Distributing Company, operates a distribution center in Visalia, California.
17 FleetPride advertises and markets directly to California consumers through in-store
18 advertising and sales pitches and through print and internet advertising. Through these
19 means, FleetPride offers for sale and sells infringing counterfeit products to California
20 residents by making infringing, false, deceptive, and misleading representations about its
21 products. FleetPride transacts business with California residents over the internet and in
22 its stores, enters into contracts with California residents via the internet and in person,
23 and collects payment for products from California residents.

24 11. This Court has personal jurisdiction over Megan Lemon. In her role as
25 Category Manager, Ms. Lemon has either personally authored or is responsible for the
26 authoring and approval of, language used by FleetPride to advertise its products in
27 California, including its unlawful use of Grover’s registered trademarks. Using language
28

1 authored or approved by Ms. Lemon, FleetPride has purposefully, continuously, and
2 systematically conducted business in California, offering for sale and selling infringing
3 counterfeit products to California residents by making infringing, false, deceptive, and
4 misleading representations about FleetPride's products.

5 12. This court has jurisdiction over Does 1–10, who are similarly involved in
6 FleetPride's offers for sale and sales of infringing counterfeit products to California
7 residents by making infringing, false, deceptive, and misleading representations about
8 FleetPride's products.

9 13. Venue is proper in this district because FleetPride resides in this district for
10 purposes of 28 U.S.C. § 1391(b) and (c) because FleetPride is subject to personal
11 jurisdiction in this district. Venue is additionally proper in this district pursuant to 28
12 U.S.C. § 1391(b) in that a portion of the claims arose in this judicial district as a result of
13 acts committed by Defendants within this judicial district.

14 **BACKGROUND ON GROVER**

15 14. Grover is a manufacturing company that specializes in the fabrication and
16 production of metal products, most notably air horns. As early as 1937, Grover
17 introduced a line of air horns that it began marketing under the GROVER name. Based
18 on the success that Grover realized in its initial production and marketing of GROVER
19 air horns, Grover expanded its line of air horns to several market segments, including
20 trucks, marine, emergency, trains, industrial, and personal use. As a result of its superior
21 quality control and other production methods, Grover has become a leading supplier of
22 air horns in these market segments and its name and its GROVER mark have become
23 synonymous with quality.

24 15. Grover has continuously used the GROVER mark since Grover began use
25 of the trademark. Grover's products marketed under the GROVER mark are distributed
26 throughout the United States and around the world.

27 ///

1 16. Grover's products sold under the GROVER and STUTTERTONE marks
2 are distributed through a variety of channels of trade, including business-to-business sales
3 to large and small resellers who sell Grover products at the retail and wholesale levels
4 and in both the aftermarket and to original equipment manufacturers. Grover also sells
5 directly to original equipment manufacturers, businesses that service and repair
6 equipment, and entities that use Grover's products directly, such as fire departments and
7 trucking companies. End users of Grover products include fire departments, other
8 government organizations, and the U.S. Military. Grover products are used in a broad
9 range of applications, including in emergency vehicles, trucks, heavy machinery, trains,
10 and marine vehicles. Grover also sells directly to purchasers at the retail level at its Los
11 Angeles headquarters and through its <http://www.airhornsbygrover.com> website. Grover
12 markets its products through print advertising, through partnerships with resellers, at
13 trade shows, and through its websites.

14 17. Grover registered its GROVER mark on the Principal Register of the
15 United States Patent and Trademark Office, Registration No. 2,114,576, for use on
16 machine parts, namely, air compressors and air valves, air horns for the truck,
17 automotive, industrial, marine and recreational vehicle industries, and baseball bats. A
18 copy of this Registration is attached as **Exhibit A**. Grover registered a GROVER "plus
19 design" mark, Registration No. 1,969,487, for use on machine parts, namely, air
20 compressors and air valves, and air horns for the truck, automotive, industrial, marine and
21 recreational vehicle industries. A copy of this Registration is attached as **Exhibit B**.

22 18. Grover also registered its STUTTERTONE mark, Registration No.
23 2,996,746, for use on air horns used by emergency vehicles. Grover has continuously
24 used the STUTTERTONE® mark since Grover began use of the trademark. Grover's
25 products marketed under the STUTTERTONE® mark are distributed throughout the
26 United States and around the world. A copy of this Registration is attached as **Exhibit C**.
27 These registrations have become incontestable.
28

1 19. As a result of Grover's use and promotion of its GROVER® and
2 STUTTERTONE® marks (collectively, "the Registered Marks"), and as demonstrated by
3 the corresponding federal registrations, the Registered Marks are distinctive, distinguish
4 Grover and its products from the products of other businesses, and distinguish the source
5 and origin of Grover's air horns and related products. As a result of these efforts by
6 Grover, the consuming public in California and the United States widely recognizes and
7 associates the Registered Marks with Grover and its products.

8 20. As a result of Grover's use and promotion of the Registered Marks in
9 California and elsewhere, Grover has developed great and valuable goodwill and has
10 acquired valuable common law rights in its Registered Marks.

11 21. The high quality and distinctive and appealing design of Grover's products
12 have earned Grover a prominent role in its market, where it offers high-end, high quality
13 air horns made in the United States that have proven to be very desirable to buyers.

14 **DEFENDANTS AND THEIR ACTIVITIES**

15 22. FleetPride is the largest retailer of heavy-duty truck and trailer parts in the
16 United States.

17 23. FleetPride is engaged in the business of selling automotive parts, including
18 air horns. FleetPride sells its products through FleetPride's nationwide network of retail
19 stores, through its wholesale unit branded as Parts Distributing Company, and also online
20 through websites including www.fleetpride.com and www.e-pdc.com. FleetPride also
21 sell its products over the phone. FleetPride sells products to customers throughout the
22 United States.

23 24. Defendants Megan Lemon and Does 1–10 are involved in the advertising
24 and sale of FleetPride's products, including but not limited to the unlawful advertising of
25 FleetPride products through the unauthorized use of Grover's trademarks.

26 25. Grover has learned that Defendants are advertising and selling counterfeit
27 GROVER® and STUTTERTONE® products to consumers, engaging in trademark
28

1 infringement and false and deceptive advertising in connection with the sale of air horns
2 and related products.

3 **Copying of Appearance and Model Numbers**

4 26. FleetPride has arranged for the manufacture of air horns and air horn-
5 related products (the “Counterfeit Products”) that are nearly identical in appearance to
6 genuine GROVER® and STUTTERTONE® products.

7 27. Defendants advertise the Counterfeit Products through websites, catalogs
8 and through written and oral communications to consumers. Defendants claim that
9 FleetPride is selling genuine STUTTERTONE® and GROVER® products when it is
10 instead offering Counterfeit Products.

11 28. As part of their scheme to confuse and defraud consumers, Defendants
12 frequently market FleetPride’s Counterfeit Products with product numbers that are
13 similar, or identical, to Grover’s products for the purpose of confusing customers into
14 thinking they are purchasing authentic GROVER® or STUTTERTONE® products.

15 29. Each of the Counterfeit Products has been manufactured and is marketed by
16 Defendants so as to be deliberately indistinguishable from genuine GROVER® or
17 STUTTERTONE® products. For example, Defendants offer for sale a “CX1510” horn
18 that, without close examination, appears to be identical to the genuine GROVER® 1510
19 air horn (also marketed by Grover as a STUTTERTONE® horn).

20 30. The same relationships exist throughout the line of Counterfeit Products
21 offered by FleetPride. Each of the Counterfeit Products is built to copy the appearance of
22 a genuine GROVER® or STUTTERTONE® product.

23 31. FleetPride’s line of “CX” Counterfeit Products duplicates the appearance of
24 a series of genuine GROVER® products. Each is identified with a model number
25 deliberately designed to confuse consumers into believing the Counterfeit Products are
26 genuine GROVER® or STUTTERTONE® products. The “CX” line of Counterfeit
27 Products includes at least the following:
28

<u>Counterfeit Product model number</u>	<u>Genuine GROVER® model number</u>
CX1024	1024
CX1042	1042
CX1045	1045
CX1054	1054
CX1055	1055
CX1087	1087
CX1093	1093
CX1094	1094
CX1099	1099
CX1127	1127
CX1136	1136
CX1160	1160
CX1180	1180
CX1218	1218
CX1230	1230
CX1240	1240
CX1510	1510
CX1512	1512
CX1517	1517
CX1522	1522
CX1600	1600
CX1601	1601
CX1607	1607
CX1612	1612

<u>Counterfeit Product model number</u>	<u>Genuine GROVER® model number</u>
CX1630 or 1630P	1630
CX1644	1644
CX1681	1681
CX1700	1700
CX1701	1701
CX1703	1703
CX1720	1720
CX1730	1730
CX1734	1734
CX2000	2000
CX2001	2001

Defendants' Awareness of Grover's Registered Trademarks

32. This is not the first time that Grover has caught FleetPride, its employees and agents infringing Grover's Registered Marks and selling Counterfeit Products.

33. On November 19, 2014, Grover initiated litigation against FleetPride in this court in a case captioned, *Grover Products Co. v. FleetPride, Inc. et al*, Case No. 2:14-cv-08938-CBM-PLA (the "Prior Litigation"). Grover's complaint in the Prior Litigation stated that Grover held registered trademarks in GROVER® and STUTTERTONE® and asserted claims against FleetPride including trademark counterfeiting, trademark infringement, and false advertising arising out of FleetPride's unauthorized and unlawful use of the Registered Marks.

34. It is indisputable that on or before November 19, 2014, FleetPride was aware the Grover held registered trademarks in GROVER® and STUTTERTONE®. On information and belief, Megan Lemon and Does 1–10 also possessed knowledge of

1 Grover’ registration of trademarks in GROVER® and STUTTERTONE® at the time the
2 Prior Litigation was commenced, or within a few weeks thereafter.

3 35. After more than a year of litigation, Grover and FleetPride stipulated to
4 dismiss the Prior Litigation on December 2, 2015 and an order dismissing the case was
5 entered on December 4, 2015.

6 36. Despite being fully aware of Grover’s trademark rights—and despite being
7 sued for the same conduct in the Prior Litigation—Defendants have chosen to once again
8 engage in the very same unlawful conduct in which it has engaged in the past.

9 **Misrepresentations in Advertising**

10 37. Defendants continue to advertise FleetPride’s Counterfeit Products using
11 Grover’s Registered Marks and model numbers in a whole series of catalogs, in other
12 website content, and in paper catalogs distributed around the country.

13 38. For example, Defendants continue to call FleetPride’s “CX1510” air horn a
14 “Stuttertone” horn and to copy Grover’s model numbers in FleetPride’s “Chrome”
15 catalog at <http://www.e-pdc.com/print-a-catalog.html> (accessed March 28, 2016). The
16 document properties of that catalog reflect that it has read this way since December 3,
17 2015 at 1:17 p.m. An image from that catalog is displayed below:



39. Defendants separately display that same "Chrome" catalog on another of FleetPride's websites, at <http://www.e-digitaleditions.com/i/296100-chrome> (accessed March 28, 2016).

40. Defendants separately display the same "Chrome" catalog in yet another location at http://www.fleetpride.com/docs/power_products/chrome.pdf?sfvrsn=2 (accessed March 28, 2016).

41. Defendants continue to use advertise FleetPride's "CX1510" air horn as a "Stuttertone" horn and copy Grover's model numbers in FleetPride's "Safety Products" catalog, available online at <http://www.e-pdc.com/print-a-catalog.html> (accessed March 28, 2016). The document properties of this catalog reflect that it has read this way since November 30, 2015 at 11:45 a.m. An image from that catalog is displayed below:

HORNS & ACCESSORIES



HORNS & ACCESSORIES

PN	DESCRIPTION
AIR HORNS & ACCESSORIES	
1630P	Nylon Horn Valve
CX1024	Single Horn, Length 24½", Flare 6" Chrome Finish
CX1042	Single 7¼" Bell, 30" Long, All Chrome
CX1045	Single 7¼" Bell, 25" Long, All Chrome
CX1054	Single 7¼" Bell, 37½" Long, All Chrome
CX1055	Single 7¼" Bell, 34" Long, All Chrome
CX1510	Single 6" Bell, 24 1/2" Long, All Chrome, Stuttertone Firetruck Horn
CX1522	Sound Repair Kit for CX1510
CX1600	Dual, Long Horn 15¼", Short 13¼" Flare 4" Chrome Bells, Painted Sound Unit
CX1601	Dual, Long Horn 15¼", Short 13¼" Flare 4" Chrome Finish
CX1678	Single 4" Bell, 13 1/2" Long, All Chrome
CX1681	Kit for CX1700
CX1700	Single 6" Bell, 24 1/2" Long, All Chrome
CX1703	Sound Unit
CX1720	1700 Series Horn Pedestal
CX1734	Single Horn Installation Kit For Vehicles Equipped With Air Brakes
CX2000	Single 4 1/4" Bell, 25 1/4" Long, Brass Bell
CX977	Rectangular Single Horn - 29" Overall Length Chrome Finish
CX978	Rectangular Single Horn - 26" Overall Length Chrome Finish

42. Defendants separately display the same "Safety Products" catalog on another of FleetPride's websites at:

http://www.fleetpride.com/docs/power_products/safety.pdf?sfvrsn=2 (accessed March 28, 2016).

43. Defendants use slightly different language in FleetPride's National Parts Guide, choosing not to use the STUTTERTONE® Mark, but still copying Grover's model numbers <http://www.fleetpride.com/fleetpride-catalogs/national-parts-guide/> (accessed March 28, 2016):

Air Horns	
PP PN	Description
AV1630	Universal Horn Valve - Plastic
CX1024	Single Horn, Length 24½", Flare 6" Chrome Finish
CX1510	Firetruck Horn 24 ½", Flare 6" Chrome
CX1600	Dual, Long Horn 15¼", Short 13¼", Flare 4" Chrome Bells, Painted Sound Unit
CX1601	Dual, Long Horn 15¼", Short 13¼", Flare 4" Chrome Finish
CX1734	Single Horn Installation Kit for Vehicles Equipped with Air Brakes

44. Defendants take the same tactic in FleetPride's "Fleet Quick Reference Guide" catalog, copying Grover's model numbers and referencing certain specific Grover model numbers without explanation in a field called "Cross." http://www.e-pdc.com/flipviewer_catalogs/fleetquickreference/index.html (accessed March 28, 2016):

Air Horns & Accessories

PN	Description	Cross
228928P	Control Valve, Plastic Universal, 1/2" Pipe Outlet, 3 1/2" Long x 1" Diameter	-----
CX56	Tank and Compressor Assembly	-----
CX112	12V Solenoid	-----
CX977	Rectangular Single Horn, 29" Overall Length, Chrome Finish	H977
CX978	Rectangular Single Horn, 26" Overall Length, Chrome Finish	H978
CX1024	Single Horn, Length 24 1/2", Flare 6" Chrome Finish	1024
CX1042	Single 7-1/2" Bell, 30" Long, All Chrome	-----
CX1045	Single 7-1/2" Bell, 25" Long, All Chrome	-----
CX1510	Single Horn, Length 24 1/2", Flare 6" Chrome Finish, Firetruck Horn	-----
CX1600	Dual, Long Horn 15 1/2", Short 13 1/2", Flare 4" Chrome Bells, Painted Sound Unit	1600
CX1601	Dual, Long Horn 15 1/2", Short 13 1/2", Flare 4" Chrome Finish	1601
CX1700	Single 6" Bell, 24 1/2" Long, All Chrome	-----

45. In addition to online catalogs, Defendants have created and distributed paper catalogs containing the same content set forth here around the country, including to FleetPride stores located in California.

46. FleetPride's catalogs do contain a disclaimer—located far away from the listings of Counterfeit Products and the unauthorized use of "Stuttertone"—stating that certain horns and parts are not made by or affiliated with Grover Products Company. The disclaimer does not alter the fundamentally deceptive nature of the content, nor does it allow Defendants to make unauthorized use of Grover's registered trademarks.

47. In addition to the content of the catalogs, FleetPride's website for Parts Distributing Company continues to advertise products that it claims are from "Grover

Products” (all images from the “Search Parts” function available from e-pdc.com, accessed March 18, 2016):

Updated 03/18/16 00:44

Search Again Part number

Chrome Accessories Consumer Catalog Category Sub-Category

Part #	Description	Price	UOM	QOH
1600	AIR HORN Dual Horn, Painted Sound Unit, Grover Products	CALL	EACH	

1 - 1 of 1 items

Updated 03/18/16 00:44

Search Again Part number

Chrome Accessories Consumer Catalog Category Sub-Category

Part #	Description	Price	UOM	QOH
1601	AIR HORN Dual Horn, All Chrome, Grover Products	CALL	EACH	

1 - 1 of 1 items

48. FleetPride advertises another product as a “Grover Type” valve:

Updated 03/18/16 00:44

Search Again Part number

Chrome Accessories Consumer Catalog Category Sub-Category

Part #	Description	Price	UOM
170.1630	GROVER TYPE HORN VALVE 1630 PL	CALL	EACH

1 - 1 of 1 items

49. The advertising content created by Defendants—including but not limited to the content specifically referenced here—contains false, misleading, and deceptive

statements that are deliberately designed to, and likely to, confuse customers into thinking that FleetPride offers authentic Grover products for sale.

Direct Misrepresentations to Consumers

50. Defendants falsely represent to potential purchasers that the Counterfeit Products are genuine products made by Grover, including by using the STUTTERTONE® Mark and Grover's model numbers.

51. Grover has not authorized Defendants to use any of its trademarks or model numbers in connection with the sale of any products.

52. The table below identifies a number of documented false, misleading, deceptive, and infringing representations made by FleetPride employees throughout the country in the course of selling Counterfeit Products:

DATE	STORE LOCATION	SALES OF COUNTERFEIT PRODUCTS
3/14/2014	FleetPride: Montgomery, AL	Individual seeking to purchase a "stuttertone" air horn was sold a FleetPride product.
3/15/2016	FleetPride: Redding, CA	Individual seeking to purchase a "stuttertone" air horn was sold a FleetPride product.
3/15/2016	FleetPride: Tucson, AZ	Individual seeking to purchase a "stuttertone" air horn was sold a FleetPride product.
3/15/2016	FleetPride: Londonderry, NH	Individual seeking to purchase a "stuttertone" air horn was sold a FleetPride product.
3/15/2016	FleetPride: South Deerfield, MA	Individual seeking to purchase a "stuttertone" air horn was sold a FleetPride product.
3/16/2016	FleetPride: Memphis, TN	Individual seeking to purchase a "stuttertone" air horn was sold a FleetPride product.
3/21/2016	FleetPride: Phoenix, AZ	Individual seeking to purchase a "stuttertone" air horn and a model 1601 air horn (Grover's product number) was sold FleetPride products.
3/21/2016	FleetPride: Victorville, CA	Individual seeking to purchase a model 1600 air horn (Grover's product number) was sold a

DATE	STORE LOCATION	SALES OF COUNTERFEIT PRODUCTS
		FleetPride product.
3/21/2016	FleetPride: North Las Vegas, NV	Individual seeking to purchase model 1510 and 1601 air horns (Grover's product numbers) was sold FleetPride products.
3/25/2016	Parts Distributing Company	Individual seeking to purchase 12 "stuttertone" horns was sold FleetPride products.

53. On information and belief, the false, misleading, deceptive, and infringing advertising tactics described above are routinely used by FleetPride throughout the country.

FleetPride's Sales of Counterfeit Products

54. On information and belief, purchasers of the Counterfeit Products routinely make their purchases believing that they are buying genuine GROVER® and/or STUTTERTONE® products.

55. On information and belief, FleetPride has supplied Counterfeit Products to re-sellers that FleetPride knows to also be willfully infringing upon Grover's trademarks and falsely representing that the Counterfeit Products are genuine GROVER® and/or STUTTERTONE® products. The Counterfeit Products are re-sold to customers who would otherwise be purchasing genuine GROVER® or STUTTERTONE® products but who have been deceived into purchasing Counterfeit Products.

56. On information and belief, purchasers of Counterfeit Products include fire departments and other builders and operators of emergency vehicles, who believe they have received genuine GROVER® or STUTTERTONE® products but who have been deceived into buying FleetPride's Counterfeit Products instead.

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COUNT ONE

FEDERAL TRADEMARK COUNTERFEITING

57. Grover repeats the allegations above as if fully set forth herein.

58. Grover has registered its GROVER® and STUTTERTONE® marks with the USPTO and has the exclusive right to use these marks in connection with its air horns and related products. Grover also has common law rights in these trademarks in connection with its air horns and related products.

59. Grover has used the inherently distinctive GROVER® and STUTTERTONE® trademarks continuously in connection with its air horns and related products.

60. Grover has exerted significant effort in the form of advertising, promotion, and sales to promote its trademarks in commerce as a name distinctive of Grover's goods.

61. As a result of such extensive and exclusive use and promotion of the GROVER® and STUTTERTONE® trademarks, the marks have developed secondary meaning as an indicator that Grover is the source of goods identified by the marks.

62. Grover's GROVER® and STUTTERTONE® trademarks represent valuable goodwill owned by Grover.

63. Defendants' use of the GROVER® and STUTTERTONE® trademarks in connection with the Counterfeit Products, and elsewhere, is without Grover's consent.

64. Defendants have used spurious designations that are identical with, or substantially indistinguishable from, the GROVER® and STUTTERTONE® trademarks in advertising, promoting, offering for sale, selling and distributing Counterfeit Products.

65. Defendants' unauthorized and counterfeiting use of the GROVER® and STUTTERTONE® trademarks on and in connection with FleetPride's advertisement, promotion, offers for sale, sales and distributions of the Counterfeit Products through its websites, catalogs and sales staff constitutes use of Grover's trademarks in commerce.

66. Defendants' unauthorized use of the GROVER® and STUTTERTONE® trademarks has, and is likely to continue to (a) cause confusion, mistake and deception, (b) cause the public to believe that the Counterfeit Products are the same as Grover's products or that FleetPride is authorized, sponsored or approved by Grover or that FleetPride is affiliated, connected or associated with or in some way related to Grover; and (c) result in FleetPride unfairly benefiting from Grover's advertising and promotion and profiting from the reputation of Grover and its trademarks all to the substantial and irreparable injury of the public, Grover and its trademarks, and their substantial goodwill.

67. Defendants have intentionally and willfully used Grover's trademarks as counterfeit marks and sold the products containing the marks knowing the products and marks are counterfeit and that the products are not genuine GROVER® and STUTTERTONE® products.

68. Defendants' actions constitute counterfeiting of the GROVER® and STUTTERTONE® trademarks in violation of 15 U.S.C. §§ 1114(1).

69. Defendants' conduct has been willful and in bad faith making this an exceptional case within the meaning of 15 U.S.C. § 1117(a).

70. Defendants' conduct has been willful, meaning that Defendants are liable to Grover for: (a) statutory damages in the amount of up to \$2,000,000 for each mark counterfeited as provided by 15 U.S.C. § 1117(c), or, at Grover's election, an amount representing three times Grover's damages or FleetPride's illicit profits; and (b) reasonable attorneys' fees and pre-judgment interest pursuant to 15 U.S.C. § 1117(a) or (b). Grover is not seeking its own lost profits as a component of its damages under 15 U.S.C. § 1117(a)(2).

COUNT TWO

FEDERAL TRADEMARK INFRINGEMENT

71. Grover repeats the allegations above as if fully set forth herein.

1 72. Grover has registered its GROVER® and STUTTERTONE® marks with
2 the USPTO and has the exclusive right to use these marks in connection with its air horns
3 and related products. Grover also has common law rights in these trademarks in
4 connection with its air horns and related products.

5 73. Grover has used the inherently distinctive GROVER® and
6 STUTTERTONE® trademarks continuously in connection with its air horns and related
7 products.

8 74. Grover has exerted significant effort in the form of advertising, promotion,
9 and sales to promote its trademarks in commerce as a name distinctive of Grover's goods.

10 75. As a result of such extensive and exclusive use and promotion of the
11 GROVER® and STUTTERTONE® trademarks, the marks have developed secondary
12 meaning as an indicator that Grover is the source of goods identified by the marks.

13 76. Grover's GROVER® and STUTTERTONE® trademarks represent
14 valuable goodwill owned by Grover.

15 77. Defendants' use of the GROVER® and STUTTERTONE® trademarks in
16 connection with the Counterfeit Products, and elsewhere, is without Grover's consent.

17 78. Defendants' unauthorized and infringing use of the GROVER® and
18 STUTTERTONE® trademarks on and in connection with FleetPride's advertisement,
19 promotion, offers for sale, sales and distributions of the Counterfeit Products through its
20 websites, catalogs and sales staff constitutes use of the GROVER® and
21 STUTTERTONE® trademarks in commerce.

22 79. Defendants engage in these activities intending to confuse and deceive the
23 public into believing that FleetPride and the Counterfeit Products its sells are sponsored,
24 affiliated or associated with Grover, when they are not.

25 80. Defendants' unauthorized use of the GROVER® and STUTTERTONE®
26 trademarks has, and is likely to continue to (a) cause confusion, mistake and deception,
27 (b) cause the public to believe that the Counterfeit Products are the same as Grover's
28

1 products or that FleetPride is authorized, sponsored or approved by Grover or that
 2 FleetPride is affiliated, connected or associated with or in some way related to Grover;
 3 and (c) result in FleetPride unfairly benefiting from Grover's advertising and promotion
 4 and profiting from the reputation of Grover and its trademarks all to the substantial and
 5 irreparable injury of the public, Grover and its trademarks, and their substantial goodwill.

6 81. Defendants have intentionally and willfully used the infringing marks and
 7 sold the products containing the marks knowing the marks are infringing and that the
 8 products are not genuine products of Grover.

9 82. Defendants' actions constitute willful infringement of the GROVER® and
 10 STUTTERTONE® trademarks in violation of 15 U.S.C. § 1114(1).

11 83. Defendants' conduct has been willful and in bad faith making this an
 12 exceptional case within the meaning of 15 U.S.C. § 1117(a).

13 84. Defendants' actions in supplying the Counterfeit Products to re-sellers
 14 knowing that the Counterfeit Products would be represented as genuine GROVER®
 15 and/or STUTTERTONE® products constitutes contributory infringement.

16 85. Defendants are liable to Grover for: (a) an amount representing the greater
 17 of three times Grover's damages or FleetPride's illicit profits; and (b) reasonable attorney
 18 fees. Grover is not seeking its own lost profits as a component of its damages under 15
 19 U.S.C. § 1117(a)(2).

20 **COUNT THREE**

21 **FEDERAL UNFAIR COMPETITION**

22 86. Grover repeats the allegations above as if fully set forth herein.

23 87. Defendants' unauthorized use of the GROVER® and STUTTERTONE®
 24 trademarks on and in connection with FleetPride's advertisement, promotion, offers for
 25 sale, sales and distributions of the Counterfeit Products through websites, catalogs and
 26 sales staff constitutes use of the GROVER® and STUTTERTONE® trademarks in
 27 commerce.
 28

1 88. Defendants engage in these activities intending to confuse and deceive the
2 public into believing that FleetPride and the products it sells are sponsored, affiliated or
3 associated with Grover, when they are not.

4 89. Defendants' unauthorized use of the GROVER® and STUTTERTONE®
5 trademarks has, and is likely to continue to (a) cause confusion, mistake and deception,
6 (b) cause the public to believe that the Counterfeit Products are the same as Grover's
7 products or that FleetPride is authorized, sponsored or approved by Grover or that
8 FleetPride is affiliated, connected or associated with or in some way related to Grover;
9 and (c) result in FleetPride unfairly benefiting from Grover's advertising and promotion
10 and profiting from the reputation of Grover and its trademarks all to the substantial and
11 irreparable injury of the public, Grover and its trademarks, and their substantial goodwill.

12 90. Defendants' actions constitute unfair competition in violation of 15 U.S.C.
13 § 1125(a).

14 91. Defendants' conduct has been willful and in bad faith making this an
15 exceptional case within the meaning of 15 U.S.C. § 1117(a).

16 92. Defendants are liable to Grover for (a) an amount representing three times
17 Grover's damages or FleetPride's illicit profits and (b) reasonable attorney fees. Grover
18 is not seeking its own lost profits as a component of its damages under 15 U.S.C. §
19 1117(a)(2).

20 **COUNT FOUR**

21 **FALSE DESIGNATION OF ORIGIN, FALSE AND MISLEADING**
22 **DESCRIPTIONS AND REPRESENTATIONS OF FACT, AND FALSE**
23 **ADVERTISING**

24 93. Grover repeats the allegations above as if fully set forth herein.

25 94. Defendants' commercial advertisement, promotion, offers for sale, sales
26 and distributions of Counterfeit Products through FleetPride's websites, catalogs and
27 sales staff misrepresents the Counterfeit Products as genuine products of Grover.
28

95. Defendants engage in these activities intending to confuse and deceive the public into believing that the Counterfeit Products are genuine products of Grover.

96. Defendants' misrepresentations give the impression that the Counterfeit Products are genuine products of Grover when in fact they are FleetPride's products, thereby falsely designating the origin of the Counterfeit Products.

97. Defendants' activities detailed above misrepresent the nature, characteristics, qualities, and geographic origin of the Counterfeit Products.

98. Defendants' actions constitute false designation of origin, false and misleading descriptions and representations of fact and false advertising in violation of 15 U.S.C. § 1125(a).

99. Defendants' conduct has been willful and in bad faith making this an exceptional case within the meaning of 15 U.S.C. § 1117(a).

100. Defendants are liable to Grover for (a) an amount representing three times Grover's damages or FleetPride's illicit profits and (b) reasonable attorney fees. Grover is not seeking its own lost profits as a component of its damages under 15 U.S.C. § 1117(a)(2).

COUNT FIVE

COMMON LAW TRADEMARK INFRINGEMENT

101. Grover repeats the allegations above as if fully set forth herein.

102. The general consuming public of California widely recognizes the GROVER® and STUTTERTONE® trademarks as designating Grover as the source of services and/or goods. Grover has common law rights in the trademarks under California law.

103. Defendants have knowingly and willfully used in California the “Grover” and “Stuttertone” marks, counterfeit marks that are substantially indistinguishable from Grover’s GROVER® and STUTTERTONE® trademarks, in connection with the sale, offering for sale, distribution, and advertising of air horns and related products.

1 111. FleetPride's actions constitute unlawful and/or unfair business practices in
2 violation of the California Unfair Competition Law ("UCL"), Cal. Bus. & Prof. Code §§
3 17200 *et seq.*

4 112. FleetPride's actions are unlawful and/or unfair under the UCL because they
5 are likely to cause confusion, mistake, or deception as to the source of origin,
6 sponsorship, or approval of its products, in that purchasers or others are likely to believe
7 FleetPride's products are Grover's products or the products of a company legitimately
8 connected with, approved by, or related to Grover.

9 113. FleetPride's actions are unlawful and/or unfair under the UCL because they
10 enable FleetPride to deceptively advertise, merchandise, market, display, and promote
11 that its products emanate from Grover or from a concern legitimately connected with or
12 approved by Grover.

13 114. FleetPride enables purchasers of its products to represent and display that
14 such products emanate from Grover or from a concern legitimately connected with or
15 approved by Grover. By reason of the foregoing, Grover has been injured in an amount
16 not yet ascertained and is entitled to the remedies provided for in Sections 17200 *et seq.*
17 of the Cal. Bus. & Prof. Code.

18 115. FleetPride's actions have caused, and if not enjoined will continue to cause,
19 irreparable damage to Grover's rights and to its business, positive reputation and
20 goodwill, which cannot be adequately compensated solely by monetary damages. Grover
21 therefore has no adequate remedy at law and seeks injunctive relief.

22 **COUNT SEVEN**

23 **UNJUST ENRICHMENT**

24 116. Grover repeats the allegations above as if fully set forth herein.

25 117. The acts of FleetPride complained of herein constitute unjust enrichment of
26 FleetPride at Grover's expense.
27
28

PRAYER FOR RELIEF

WHEREFORE, Grover Products Co. requests the following relief:

1. A permanent injunction enjoining and restraining Defendants, including all of FleetPride's agents, employees, officers, servants, representatives, successors, and assigns and others in active concert or in participation with FleetPride:

- a. from the use, in any manner whatsoever of Grover's trademarks, or combinations or variations thereof, including phonetic equivalents;
- b. from using Grover's product model numbers in the marketing or advertising for sale of products sold by FleetPride;
- c. from using any false and/or misleading statements or advertisements;
- d. to deliver up for destruction, or otherwise destroy, all of the Counterfeit Products and all related advertising or sales materials, including those materials containing any infringing, false, or misleading statement regarding Grover or its products;
- e. to notify all past purchasers of Counterfeit Products that the purchased products were not genuine GROVER® or STUTTERTONE® products and may not be re-sold as though they were GROVER® or STUTTERTONE® products; and
- f. with such injunction including a provision directing FleetPride to file with the Court and serve on Grover within thirty (30) days following the injunction a report in writing and under oath setting forth in detail the manner and form in which FleetPride has complied with the injunction and video evidence documenting the destruction.

2. Requiring an accounting of profits made by FleetPride as a result of the acts complained of herein;

1 3. Requiring a payment of damages in an amount to be proven at trial and/or
2 disgorgement of all profits or ill-gotten gains made by FleetPride as a result of the acts
3 complained of herein;

4 4. Awarding damages equal to three times the amount suffered as provided by
5 15 U.S.C. § 1117, together with attorneys' fees;

6 5. Awarding statutory damages;

7 6. Awarding exemplary damages;

8 7. Awarding prejudgment interest; and

9 8. Awarding Grover its costs, disbursements, and attorneys' fees, together
10 with such other and further relief as this Court may deem just and equitable.

11 Respectfully submitted,

12
13 Dated: March 29, 2016

FOX ROTHSCHILD LLP

14
15 By: /s/ James E. Doroshow

16 James E. Doroshow, SBN 112920

17 Ashe P. Puri, SBN 297814

18 Attorneys for Plaintiff

19 GROVER PRODUCTS CO.
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JURY DEMAND

Pursuant to Rule 38(b) of the Federal Rules of Civil Procedure, Grover Products Co. requests a trial by jury on all claims and issues triable by jury.

Respectfully submitted,

Dated: March 29, 2016

FOX ROTHSCHILD LLP

By: /s/ James E. Doroshow

James E. Doroshow, SBN 112920

Ashe P. Puri, SBN 297814

Attorneys for Plaintiff

GROVER PRODUCTS CO.

ACTIVE 39563207v2 03/29/2016